

REMARKS

This response is submitted within two months of the August 7, 2008 mailing of a final Office Action. Following entry of this amendment, claims 2-10, 12-21, 23-32, and 34-54 remain pending in the application. Claims 8, 9, 19, 20, 30, 31, 41, 42, 44, 51 and 52 are independent. In the final Office Action, the Examiner:

- indicated that claims 8, 9, 19, 20, 30, 31, 41, 42, 51 and 52 are allowable;
- rejected pending claims 1, 5, 10-11, 15, 21, 33, 37 and 43 under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 5,749,872 to Kyle et al. ("Kyle") in combination with U.S. Patent No. 5,601,553 to Trebing et al. ("Trebing");
- rejected pending claims 2, 12 and 34 under 35 U.S.C. § 103(a) as obvious in view of Kyle in combination with both Trebing and U.S. Patent No. 4,867,144 to Karas et al. ("Karas");
- rejected pending claims 3, 13 and 35 under 35 U.S.C. § 103(a) as obvious in view of Kyle in combination with both Trebing and U.S. Patent No. 3,630,261 to Gley ("Gley");
- rejected pending claims 4, 6, 14, 16-17, 26, 32, 36 and 38-39 under 35 U.S.C. § 103(a) as obvious in view of Kyle in combination with both Trebing and U.S. Patent Publication No. 2002/0013587 to Winkvist et al. ("Winkvist");
- rejected pending claims 7, 18 and 40 under 35 U.S.C. § 103(a) as obvious in view of Kyle in combination with both Trebing and U.S. Patent No. 5,674,222 to Berger et al. ("Berger");
- rejected pending claim 22 and 29 under 35 U.S.C. § 103(a) as obvious in view of Trebing in combination with Berger;
- rejected pending claim 23 under 35 U.S.C. § 103(a) as obvious in view of Trebing in combination with both Berger and Karas;
- rejected pending claim 24 under 35 U.S.C. § 103(a) as obvious in view of Trebing in combination with both Berger and Gley;
- rejected pending claims 25 and 27-28 under 35 U.S.C. § 103(a) as obvious in view of Trebing in combination with both Berger and Winkvist;

- rejected claim 44 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,306,136 to Baccelli (“Baccelli”);
- rejected claims 45-46 and 48-49 under 35 U.S.C. § 103(a) as obvious in view of Baccelli in combination with Winqvist;
- rejected claim 47 under 35 U.S.C. § 103(a) as obvious in view of Baccelli in combination with both Winqvist and Kyle;
- rejected claim 50 under 35 U.S.C. § 103(a) as obvious in view of Baccelli in combination with both Winqvist and Berger;
- rejected claim 53 under 35 U.S.C. § 103(a) as obvious in view of Baccelli in combination with both Winqvist and Trebing;
- rejected claim 54 under 35 U.S.C. § 103(a) as obvious in view of Baccelli in combination with Karas; and
- rejected claim 1, 11 and 22 on grounds of non-statutory obviousness-type double patenting in view of claims 16, 17 and 18, respectively, of U.S. Patent No. 6,623,486 to Weaver et al. (“the Weaver ’486 patent”).

Applicants have amended dependent claims 2-7, 10, 12-18, 21, 23-29, 32, 34-40 and 43 to ultimately depend from one of allowed independent claims 8, 19, 30 and 41. Claims 1, 11, 22 and 33 have been canceled. All amendments are fully supported by the originally-filed specification and/or drawings of the present application and place the application in condition for allowance. No new matter has been added. The claim amendments made herein do not represent acquiescence in the Examiner’s rejections, but rather are made only to expedite prosecution of the present application and/or maintain consistency in claim language. Applicants expressly reserve the right to pursue the subject matter of any previously presented claims in one or more continuation applications. As discussed more fully below, Applicants respectfully submit that each of the currently pending claims define features that are not disclosed, taught or suggested by the prior art of record and respectfully requests allowance of same.

Claim Rejections — 35 U.S.C. § 102(e)

Independent claim 44 was again rejected under 35 U.S.C. § 102(e) as anticipated by Baccelli. In response to applicants’ previous amendments and arguments concerning this rejection, the Office Action states that:

Whether the holes are renamed as a “first” or “second” hole, the reference still reads on the specified type of hole as shown in the previous rejection. Bacelli discloses at least one first threaded hole (111) and a[t] least one second non-threaded hole (121). Also, applicant[s] submit that Baccelli does not disclose a screw with a non-threaded upper portion of the shaft for non-locking engagement. Compared to the fully threaded screw of Fig. 4, Fig. 5 discloses a screw (23’) that has a non-threaded upper portion, capable of a non-locking engagement with the plate.

(Aug. 7, 2006 Office Action at 2 (hereinafter “Final Office Action”).)

As discussed below, applicants respectfully traverse the anticipation rejection of claim 44 based on Bacelli because Bacelli at least fails to disclose, teach or suggest a bone fixation system comprising, *inter alia*, a bone plate having a first threaded hole, a second non-threaded hole, a first screw having a shaft with a thread for engaging bone and a non-threaded upper portion for non-locking engagement with the first threaded hole, and a second screw having *a shaft with a thread for engaging bone* and a head, wherein *the first and second screws remain seated in their respective first and second holes* for substantially as long as the bone plate is implanted. The Examiner cites hole 121 (shown best in FIG. 3) of Bacelli as the recited “second non-threaded hole,” but Bacelli fails to disclose “a second screw having a shaft with a thread for engaging bone” seated in the non-threaded hole 121, as recited in previously presented claim 44. As Bacelli makes clear, holes 121 receive screws 30, which clearly do *not* include a thread for engaging bone. Screws 30 are used solely to assemble the plate elements of Bacelli and do *not* penetrate bone. (Bacelli at col. 3, l. 57 to col. 4, l. 3; FIGS. 1-3.) For this reason alone, Bacelli fails to anticipate claim 44, and, accordingly, applicants respectfully request that the anticipation rejection of claim 44 be withdrawn and that this claim, and each of its dependent claims 45-50 and 53-54, be allowed.

Allowable Subject Matter

Applicants would like to thank the Examiner for the indication of allowable subject matter in claims 8-9, 19-20, 30-31, 41-42 and 51-52. As discussed above, applicants have amended dependent claims 2-7, 10, 12-18, 21, 23-29, 32, 34-40 and 43 to depend from one of allowed independent claims 8, 19, 30 and 41. Applicants respectfully request allowance of each of these newly amended dependent claims.

In view of the above amendments and remarks, Applicants respectfully request that the Examiner reconsider pending claims 2-7, 10, 12-18, 21, 23-29, 32, 34-40, and 43-54 with

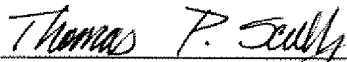
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a view towards allowance. The Examiner is invited to call the undersigned attorney at (212) 326-3939 if a telephone call could help resolve any remaining issues.

No fees are believed due with this submission. However, should any additional fees be required, please charge such fees to Jones Day deposit account no. 50-3013.

Respectfully submitted,

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